

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of:

Joan K. Benziger  
5207 Westbard Avenue  
Bethesda, MD 20816-1411

Complainant

vs.

Westbard Mews Condominium<sup>1</sup>  
Attn: Mr. John O'Neil, Esq., President  
5121 Westbard Avenue  
Bethesda, MD 20816-1411

Respondent.

Case No.: 557-O

**DECISION AND ORDER**

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on December 18, 2002 pursuant to Section 10B-5, 10B-9(a), 10B-10, 10B-12, and 10B-13 of the Montgomery County Code, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

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<sup>1</sup> When this dispute was filed, Mr. John O'Neil, Esq. was the Association President and although there was a change in the presidency on or about July 1, 2002, Mr. O'Neil, Esq. presented the case on behalf of Westbard Mews Condominium at the December 18, 2002 hearing. A copy of this opinion should also be sent to the current Board c/o Katherine Copmann, President at 5173 Westbard Avenue, Bethesda, MD 20816-1411. This decision and order is binding on all parties.

### BACKGROUND

Joan Benziger resides in and owns the townhouse condominium unit at 5207 Westbard Avenue, which is a unit within the Westbard Mews Condominium ("Westbard" or the "Association"). Westbard is a 36-unit self-managed townhouse community that was created in 1973 and has been operated and managed by volunteer Board of Director owners.

In October of 2001, Ms. Benziger first advised the Board of Directors and other Westbard owners of the applicable sections of the Maryland Condominium Act which she alleges provides that the Board of Directors "must notify all resident and non-resident owners in advance of future meetings". This letter was included in the record as Complainant's Exhibit #1. A copy is attached to this Decision and Order. On May 31, 2002, the Complainant filed a complaint with this Commission on Common Ownership Communities ("CCOC") that requested an order to the Board that they notify unit owners in advance of Board of Directors meetings.<sup>2</sup> This was also a complaint about alleged closed meetings, that the panel felt obligated to address and provide guidance to the Westbard Community.

In that the dispute was not resolved through mediation, and all procedures and remedies provided in the Association's documents were exhausted, the matter was referred to the CCOC for action pursuant to Section 10B-11(f) of the Montgomery County Code. This matter was heard on December 18, 2002 in a hearing before a panel

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<sup>2</sup> The Complainant's original filing included an alleged claim for reimbursement of costs for damage to her unit. By letter dated September 11, 2002, the Commission did not accept jurisdiction of that aspect of the case as that portion of the complaint is beyond the jurisdiction of the Commission. The issue presented before the Panel was the question of notice of Board of Directors' meetings.

consisting of Commissioners Russell Subin, Howard Cihak and Panel Chair Jeffrey Van Grack.

### ISSUES

1. Whether the Westbard Board of Directors is required to have open Board of Directors meetings.
2. Whether the Westbard Board of Directors should give notice of their Board meetings to all resident and non-resident owners.

### APPLICABLE DOCUMENTS AND LAW

A. The applicable sections of the Westbard Mews Condominium Association By-Laws provide as follows:

I. Westbard Mews Condominium Bylaws –

- a) Article III – Administration; Section 6. Notice of Meeting. It shall be the duty of the Secretary of the Council, elected in accordance with the provisions of Article V hereof, to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the time and place where it is to be held, to each owner of record, at least thirty (30) days prior to such meeting. The mailing of the notice in the manner provided in this Section shall be considered notice served.
- b) Article IV - Board of Directors; Section 10. Regular Meetings. Regular Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.
- c) Article IV, Board of Directors; Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director. Such notice shall be given personally or by mail, telephone or telegraph, and such notice shall state the time, place (as hereinabove provided) and the purpose of the meeting. Special meetings of the Board of

Directors shall be called by the President or Secretary in like manner and on like notice on the written report of at least two (2) Directors.

B. The applicable Sections of the Maryland Condominium Act (the "Act") provide as follows:

(c) §11-109(c) – Council of Unit Owners – Meeting of council of unit owners or Board of Directors. - Notice, quorum and procedural requirements – or Board

- (1) A meeting of the council of unit owners or Board of Directors may not be held on less notice than required by this section.
- (2) The council of unit owners shall maintain a current roster of names and addresses of each unit owner to which notice of meetings of the board of directors shall be sent at least annually.
- (3) Each unit owner shall furnish a council of unit owners with his name and current mailing address. A unit owner may not vote at meetings of the council of unit owners until this information is furnished.
- (4) A regular or special meeting of the council of unit owners may not be held on less than 10 nor more than 90 days' written notice delivered or mailed to each unit owner at the address shown on the roster on the date of the notice.
- (5) Notice of special meetings of the board of directors shall be given as provided in the bylaws.
- (6) Except as provided in §11-109.1 of this title, a meeting of a governing body shall be open and held at a time and location as provided in the notice or bylaws.
- (7)
  - (i) This paragraph does not apply to any meeting of the governing body that occurs at any time before the meeting at which the unit owners elect officers or a board of directors in accordance with paragraph (16) of this subsection.
  - (ii) Subject to subparagraph (iii) of this paragraph and to reasonable rules adopted by the governing body under § 11-111 of this subtitle, a governing body shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the condominium.
  - (iii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the unit

owners; comments may be limited to the topics listed on the meeting agenda.

- (iv) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the Condominium.

§ 11-109.1 – Closed meetings of Board of Directors --

- (a) A meeting of the board of directors may be held in close session only for the following purposes:

- (1) Discussion of matters pertaining to employees and personnel;
- (2) Protection of the privacy or reputation of individuals in matters not related to the council of unit owners' business;
- (3) Consultation with legal counsel;
- (4) Consultation with staff personnel, consultants, attorneys, or other persons in connection with potential litigation;
- (5) Investigative proceedings concerning possible or actual criminal misconduct;
- (6) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or
- (7) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

- (b) If a meeting is held in closed session under subsection (a) of this section:

- (1) An action may not be taken and a matter may not be discussed if it is not permitted by subsection (1) of this section; and
- (2) A statement of the time, place, and purpose of any closed meeting, the record of the vote of each board member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next meeting of the board of directors.

### III. Montgomery County Code

#### a) Closed Meetings<sup>3</sup>

#### FINDINGS

The Board's failure to inform itself of the existence of and requirements imposed by the Maryland Condominium Act is not plausibly excused by the claim of not being aware.

#### a. OPEN MEETINGS

There was no evidence that the Board of Directors' meetings were closed, and if they were closed, the purpose was consistent with the reasons set out in the Act. The Board did not comply with the specific requirements of the Act, but needs to be aware and comply with Sections 11-109.1(b) of the Act when they go into closed executive session.

The Maryland Condominium Act specifically addresses the specific requirements of closed meetings and allows them to be held under certain circumstances as stated above at Section 11-109.1 of the Act. There was no evidence that this law was violated. However, the Panel feels strongly that the Board needs to keep the meetings open, subject to the requirements of the Act.

The Act's requirement for open meetings proceeds from the same "sunshine" philosophy that led the Maryland legislature to impose that requirement on itself and other government entities throughout the state. The underlying premise is that those

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<sup>3</sup> A law, which was created in 1990, but was subsequently, repealed in 1994, required notice of meetings. This provision appeared at Section 10B-16 of Montgomery County Code and required actual notice to all owners of all meetings including Board of Directors meetings.

who govern are more likely to act prudently when they are exposed to the scrutiny of the governed.

b. NOTICE OF BOARD OF DIRECTORS MEETINGS

Although the law does not specify how much notice of governing body meetings must be given, it is entirely reasonable that, unless some *reasonable* notice is given it is likely one or more owners may be frustrated in their desire to attend the meeting. Furthermore, it is the standard throughout the industry that Board of Directors advise their owners of when and where the meetings take place. This is a minimal business judgment decision that Westbard is not complying with. Reasonable notice must take into account that owners are likely to have personal, family and employment obligations they will attempt to reschedule to enable attending the governing body meeting if they desire to do so.

The most reasonable arrangement is to establish once a year a regular day, time and place each month, every other month, quarterly, or twice a year as required by the Bylaws when and where Board meetings will be held (i.e., third Tuesdays, at 7:30 p.m., at XXXX Westbard Avenue). It is worthwhile to advise the owners of this schedule at the annual meeting. If there is no business to transact, then the meeting may be adjourned following the conclusion of any owner comments. Emergencies always arise when scheduling any meeting but every effort should be made to reschedule if any emergency arises. The use of community bulletin boards can also aid in the process.

Even the absence of owners attending properly noticed board meetings will not justify discontinuing the notice process.

Once again, the Board's failure to inform itself of the existence of and requirements imposed by the Maryland Condominium Act is not plausibly excused by the claim of not being aware. Educated individuals with professional careers ought to have realized there must be laws governing the establishment of an entity like Westbard Mews and that those same laws might specify operational requirements. In any event, "ignorance of the law is no excuse."

#### ORDER

The Board of Directors shall give notice of all Board meetings.

In view of the foregoing, and based upon the evidence of the record, and for the reasons set forth above, it is the 30 day of January, 2003 by the Commission on Common Ownership Communities,

ORDERED that the Complainant's request is granted and as follows:

- 1) The Board of Directors of Westbard Mews Condominium shall establish a regular date, time and place for its regular Board of Directors meetings. For special meetings, the Board shall follow the Bylaws. For special meetings, the Board shall inform owners when and where a special meeting is being held when the subject matter does not justify a closed meeting under Section 11-109.1 of the Maryland Condominium Act.
- 2) The Board of Directors must notify all the Condominium's owners by mail<sup>4</sup> of this hearing and its Conclusions and Orders, and include a

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<sup>4</sup> Although Section 11-109(c)(4) of the Act references "written notice delivered or mailed to each unit owner", the By-Laws refer to mailing. The panel feels that in light of the circumstances here, that mailing is the appropriate method in this case.



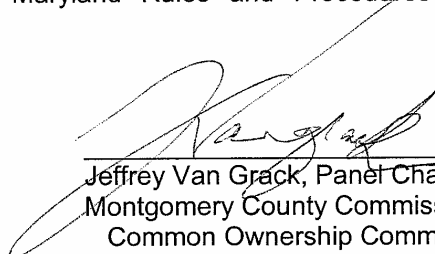
copy of the Sections 11-109 and 11-109.1 of the Maryland Condominium Act, as well as an announcement of the regular date, time and place of future Board of Directors meetings.

3) The Board of Directors must either set aside sufficient funds or immediately increase annual assessments to enable a properly mailed notice of the Condominium's future annual meetings, as required in the Condominium's bylaws.

4) That the Board of Directors should seriously consider some Board of Directors educational or training program.

The foregoing was concurred in by panel members Russell Subin and Howard Cihak.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty days after date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.



Jeffrey Van Grack, Panel Chairman  
Montgomery County Commission on  
Common Ownership Communities